

STATE OF MICHIGAN
COURT OF APPEALS

PATRICIA J. CORNELL,

Plaintiff-Appellant,

v

STEPHEN J. CORNELL,

Defendant-Appellee.

UNPUBLISHED

June 1, 2004

No. 251107

Mecosta Circuit Court

LC No. 99-013555-DM

Before: Gage, P.J., and O'Connell and Zahra, JJ.

PER CURIAM.

In this dispute, plaintiff appeals as of right the order granting defendant sole custody of the divorced couples' youngest daughter. We affirm.

Defendant reopened this custody dispute when he complained that plaintiff interfered with his visitation by exerting influence over their daughters and encouraging them to fear him, refuse to visit him, and accuse him of sexual impropriety. The impetus behind defendant's motion for a change in the youngest daughter's custody was the recent accusation that he sexually abused her. The accusation was later found to lack evidentiary support by a Friend of the Court (FOC) referee and the Mecosta County prosecutor's office. While the trial court initially refrained from assigning blame for the children's refusal to visit their father and their recurring sexual accusations against him, it eventually concluded that plaintiff implanted and fostered irrational fears in her children, essentially causing them to avoid their father at all costs. It eventually found that plaintiff went to great lengths to encourage others to support her daughters' accusations, even requesting an alteration of medical records. The trial court's findings were supported by the record and were not against the great weight of the evidence.

Plaintiff first argues that the trial court erred by failing to determine whether defendant showed proper cause or a change in circumstances before it analyzed the thirteen best interest factors. We disagree. The finding of proper cause or change in circumstances is a factual determination, so the standard is whether the findings run contrary to the great weight of the evidence. MCL 722.28; *Vodvarka v Grasmeyer*, 259 Mich App 499, 507, 511-512; 675 NW2d 847 (2003).

Before a court may reconsider a settled custody question, the party seeking the change in custodial environment must demonstrate that proper cause or a change in circumstances impels reevaluation of the custodial situation. *Vodvarka, supra* at 508. Proper cause means "one or

more appropriate grounds that have or could have a significant impact on the child's life to the extent that a reevaluation of the child's custodial situation should be undertaken." *Id.* at 511. To show a change in circumstances, conditions that might significantly impact the child's well-being must have materially changed. *Id.* at 513. A fresh accusation of sexual abuse, whether false or valid, marks a significant change in circumstances and provides proper cause to reevaluate a child's custodial situation. Therefore, the trial court did not err when it reconsidered its original custody order.

Plaintiff also argues that the trial judge was biased against her and her daughters and that his rulings were based on an overwhelming antagonism against her. We disagree. Based on these allegations, plaintiff moved to disqualify the judge. In reviewing a motion to disqualify a judge, we review for abuse of discretion a trial court's factual findings and review de novo the court's application of those facts to the relevant law. *Cain v Dep't of Corrections*, 451 Mich 470, 503; 548 NW2d 210 (1996). Nothing on the record reflects that the trial court based its rulings on anything other than the facts as they unfolded in court. The trial court's comments regarding the children's control over their parents' decisions reflected a frustration with the children's repeated willful failure to comply with the court's visitation orders. Its perception of plaintiff was formed by her arguments, testimony, and repeated evidence that she interfered with the court's visitation orders and defendant's relationship with his daughters. Because the trial court was not subject to bias, prejudice, extra-judicial information, or any other circumstance that would create partiality, plaintiff's motion for disqualification was correctly denied. MCR 2.003.

Next, plaintiff argues that the trial court clearly erred when it found that the best interest factors favored defendant. Because we find sufficient evidentiary support for the trial court's conclusion that plaintiff exerted improper influence on her youngest daughter to defeat the court's orders and destroy the daughter's relationship with defendant, we will not disturb the trial court's corresponding decisions regarding the best interest factors. Furthermore, the trial court correctly found by clear and convincing evidence that altering the youngest child's custodial environment was in her best interests. Given the trial court's substantiated findings that plaintiff instilled fear and distrust in her children to the point of manufacturing and fostering false accusations of abuse, the custody change was the only realistic way of preserving a relationship between the child and her father. While plaintiff argues that the trial court disregarded the child's delicate mental condition, the record demonstrates that the trial court properly considered the issue and found that preservation of the child's relationship with her father outweighed the detrimental affect of any shock arising from the sudden custody change. Under the circumstances of this case, we agree with the trial court's conclusion.

Plaintiff argues that the trial court reversibly erred when it failed to interview the youngest daughter and ascertain her preference. This issue was not preserved because neither side requested the interview. Moreover, the trial court acknowledged that the young girl would probably express a preference for her mother, but considered the presumed preference dubious given the mother's exercise of improper influence over the child. Because the child's expression of preference for plaintiff would not have altered the case's outcome, we will not reverse on this basis. *Treutle v Treutle*, 197 Mich App 690, 694-695; 495 NW2d 836 (1992). Plaintiff's other challenges to the best interest factors essentially restate her disagreement with the basic finding that plaintiff employed insidious and effective means to destroy her daughter's relationship with

defendant. Because the record supports this finding we find no error in the trial court's balancing of the factors or its ultimate decision.

Affirmed.

/s/ Hilda R. Gage
/s/ Peter D. O'Connell
/s/ Brian K. Zahra